

RALPH L. ANDERSEN, CHP
*Senior Director, Radiation Safety and
Environmental Protection*

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.739.8111
rla@nei.org
nei.org



April 26, 2013

Mr. Ho K. Nieh, Jr.
Director, Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Table of Minimum Decommissioning Funding in 10 C.F.R. § 50.75 (c) for Commercial Nuclear Power Reactors

Project Number: 689

Dear Mr. Nieh:

On behalf of the nuclear energy industry, I wish to express our appreciation to the NRC staff for convening a timely and informative public meeting on February 27, 2013, to discuss and receive stakeholder input regarding the efficacy of the table of minimum decommissioning funding in 10 C.F.R. § 50.75 (c) for commercial nuclear power reactors. This letter is in follow-up to that meeting and is intended to reaffirm the views we expressed at the meeting.

At the meeting, stakeholders were advised that the NRC staff will be responding later this year to Commission direction provided in Staff Requirements Memorandum SECY-06-0065, which states: "In the future (circa 2011) when more cost return information is available, NRR should review the formula used for decommissioning funding requirements and adjust it, if necessary."

In summary, we do not believe that any adjustment to the formula used for decommissioning funding requirements is necessary at this time. This conclusion is based on our review and understanding of previous NRC staff views on the decommissioning funding process, current industry funding practices and experience, and actual industry decommissioning and license termination results, as described in more detail below.

In April 2012, the U.S. General Accounting Office (GAO) published Report GAO-12-258, "NRC's Oversight of Nuclear Power Reactors' Decommissioning Funds Could Be Further Strengthened." The report does not specifically recommend that the formula used for decommissioning funding requirements be changed. The

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report does include several recommendations aimed at strengthening NRC's oversight of decommissioning funding assurance.

In its comments to the GAO (included in Appendix III of the GAO report), the NRC described how the decommissioning funding formula is only one input to the agency's regulatory process for funding assurance and that the formula is intended to provide "a reference level for use by licensees as a planning tool early in plant life, based on studies to decommission a reference reactor." The NRC comments further note that NRC requirements include annual adjustments to the reference level to account for inflation, biennial reports to the NRC by licensees to demonstrate adequate funding, and more precise (site-specific) adjustments to the funding amounts as plants approach the end of operating life and enter into decommissioning. In its comments, the NRC concludes that "[b]ased on experience, the regulatory system has been adequate to ensure that power reactor licensees obtain funds when needed for decommissioning."

We share the staff's views regarding the robustness and effectiveness of the overall regulatory framework, including the current formula used for decommissioning funding requirements, to provide reasonable assurance that the bulk of funds needed for decommissioning will be accrued early in plant life and that additional funding, if needed, will be available at the time of plant shutdown and ultimate decommissioning. In our view, nuclear energy industry experience with decommissioning funding and actual decommissioning and license termination bears this out.

Since the mid-1990s, six commercial nuclear power reactors have completed decommissioning (with the exception of disposal of used fuel) under the current NRC regulatory framework. We note that these plants were successfully decommissioned under significantly challenging circumstances that we believe reflect realistic "bounding conditions" in regard to decommissioning funding. The majority of plants ceased operation well in advance of the end of their 40-year licensed operating periods. In addition, several plants, by agreement with their respective state governments, actually decontaminated their facilities to conform with State-imposed radiation clean-up standards that were far more restrictive than corresponding NRC radiation safety standards. Also, for various reasons, the six decommissioned plants pursued prompt decommissioning, in lieu of the longer time horizons allowed by the regulations. These longer safe storage periods allow for significant radioactive decay, which can reduce worker radiation exposure and the volume of low-level radioactive waste for disposal at licensed radioactive waste disposal facilities. Nevertheless, in each case, adequate decommissioning funds were available for licensees to fully comply with NRC requirements for decontamination, radioactive waste disposal, radiation safety and license termination in a manner that is fully protective of health and safety.

There are currently 11 commercial nuclear power reactors in decommissioning, of which six are in SAFSTOR, four are in DECON, and one is a possession only license. Each are required to provide periodic reports to the NRC that, among other things, specifically address the status of decommissioning funding. We are not aware of information in the reports or in other public correspondence with the NRC that indicates actual or projected shortfalls in funding that would be expected to adversely impact timely completion of decommissioning in accordance with NRC requirements.

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In 2009, shortfalls in decommissioning funding were reported by a number of utility company licensees operating commercial nuclear power plants associated with the significant decrease in investment portfolios that occurred worldwide. In accordance with NRC requirements, licensees provided specific plans on how the shortfalls would be remedied and by March 2011 all shortfalls were resolved – some by increases in the market value of respective investment portfolios associated with economic recovery, and others through various financial means that are specified and allowed within NRC regulations and guidance. The shortfalls were in no way attributable to shortcomings in the NRC regulations – rather the reporting and remedying the shortfalls were facilitated by NRC regulations in a timely manner. This significant economic occurrence, regulatory response, and decommissioning fund recovery bolsters our view that the regulatory framework and criteria for decommissioning funding are robust and appropriate.

The industry also appreciates NRC making a draft report prepared by Pacific Northwest National Laboratory¹ publicly available. We recognize that the draft report has not been finalized and that the NRC is not currently soliciting comments on its contents. We have, however, reviewed the report and do not believe that its conclusions compel a change to the minimum decommissioning funding formula at this time. Although the draft report predictably revealed some variation when the decommissioning funding assurance yielded by the minimum funding formula was compared to site-specific cost estimates and actual decommissioning experience, we do not believe that such variation indicates that the formula is failing to serve its intended purpose: to ensure collection of the “bulk” of the funds required for decommissioning relatively early in plant life. If the NRC decides to finalize the report and use it to support a modification of 10 C.F.R. § 50.75, we encourage the agency to solicit comment on the technical basis for such change – including the PNNL report – prior to developing such a proposed rule.

We conclude from the foregoing that the existing NRC regulatory framework, including the formula for decommissioning funding requirements, has been tested in a number of diverse and significant ways and no substantive basis has been revealed that would indicate the need for adjustments to the current formula.

Again, we appreciate the opportunity for the timely and open exchange of views with the NRC staff on the topic of decommissioning funding to help inform the staff’s response to the Commission action item noted above. If you have any questions regarding this matter, please contact me or Jerry Bonanno at 202-739-8147; jxb@nei.org.

Sincerely,



Ralph L. Andersen

¹ “Assessment of the Adequacy of the 10 CFR 50.75(c) Minimum Decommissioning Fund Formula,” (Manuscript Completed: November 2011).